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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/928,304

08/13/2001

Scott M. Chastain

158/71

7374

25297

7590

03/29/2004

JENKINS & WILSON, PA  
3100 TOWER BLVD  
SUITE 1400  
DURHAM, NC 27707

EXAMINER

PRASAD, CHANDRIKA

ART UNIT

PAPER NUMBER

2839

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/928,304

Applicant(s)

CHASTAIN ET AL.

Examiner

Chandrika Prasad

Art Unit

2839

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/13/01.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***DETAILED ACTION***

***Election/Restrictions***

1. Applicant's election without traverse of Group I (Figure 2, Claims 1-8 and 11) and cancellation of claims 9, 10 and 12-36 in Paper No. dated 01/09/2004 is acknowledged.

***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the coefficient of thermal expansion of the filler and the tube being lower than that of the cross-linked polyolefin; cross-linked density range; and nominal diameter must be shown or the feature(s) canceled from the claims 1-8 and 11. No new matter should be entered. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

3. The following is a quotation of an appropriate paragraph of 37 CFR 1.75:  
  
(d) The claim or claims must conform to the invention set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description. (See 1.58(a)).
4. Specification is objected under 37 C. F. R. 1.75(d) because the coefficient of thermal expansion of the filler and the tube being lower than that of the cross-linked polyolefin; cross-linked density range; and nominal diameter have not been described.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-8 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The coefficient of thermal expansion of the filler and the tube being lower than that of the cross-linked polyolefin; cross-linked density range; and nominal diameter have been neither described in the specification nor shown in the drawings.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless-

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4, 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Yang et al. (5761362).

Yang (Figures 1-6, claims 1-19 and Column 6, lines 22-67) discloses a fiber optic tube cable comprising an air blown fiber tube made from a cross-linked polyolefin or polyethylene and mixed with a filler material wherein the coefficient of thermal expansion of the filler and the tube is lower than that of the cross-linked polyolefin. The

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filler may be a talc, mica or glass fibers, etc in the amount not greater than 5.0% by mass.

***Claim Rejections - 35 USC § 903***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 5, 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang et al. (5761362). Yang discloses all the features of these claims as described above except the cross-linked density range, the nominal diameter and the coefficient of thermal expansion being less than 150 °C over the temperature range of 20 to -40 degrees centigrade. The instant invention does not provide any reasons or specific problem to be solved by these specific properties of the materials. It would have been obvious to one having ordinary skill in the art at the time of the instant invention to select materials with these properties because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. In re Leshin, 125 USPQ 416.

***Contact Information***

11. Any correspondence to this action may be mailed to:

Commissioner for Patents

Post Office Box 1450

Alexandria, VA 22313-1450

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chandrika Prasad whose telephone number is (571) 272-2099.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's art unit can be reached at (571) 272-2800 ext 39. The fax number for this Group is (703) 872-9306.



Chandrika Prasad

Primary examiner

February 27, 2004